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MEMORANDUM FOR: George L. Cary

FROM :

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SUBJECT :

Draft Executive Order, "Suitability Requirements for Government Employment"

The Privacy Committee of the Domestic Council for many months has been involved in redrafting Executive Order 10450. Recently this committee submitted to OMB a proposed draft of the Executive Order. OMB farmed out the draft Order to various executive agencies and departments, including the CIA. By way of background, neither the Agency nor the Intelligence Community Staff was consulted formally during the drafting process. (Very late in the game, we were asked for comments, but, according to [redacted] and the Office of Security, this was in effect an empty gesture.) The net result is a draft Executive Order that is unacceptable.

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Basically, this proposed Executive Order would lower the standards according to which any Federal agency could conduct "suitability" investigations of applicants or of employees. Specifically, the draft Order is unacceptable because:

- the temporal scope of investigations is limited to a five year maximum (presently the Agency goes back 15 years to investigate applicants and other persons);
- the particular aspects of a security investigation fall far short of those we consider necessary and as are spelled out in DCID 1/14, regarding access to Sensitive Compartmented Information;
- certain notification procedures are required, which would be inconsistent with the need, in many cases, that the Agency affiliation of our investigators not be made known if at all until after the investigation has been completed;
- the exemption provided in Section 3(b) for the CIA, NSA and the FBI, is ambiguous, overly narrow and poorly drafted;
- the employment of aliens apparently would be prohibited (such a restriction would work a particular hardship [redacted])

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- the appeal mechanism established in the Order could create problems in terms of alerting individuals to the fact that they were the subject of CIA interest;
- the purported rights and protection afforded employees and applicants arguably could be read as a limitation on the Director's statutory authority to terminate summarily any employee; and
- the requirement that the Director retain personal responsibility for certain administrative procedures under the Order would be a not-insubstantial burden on the DCI.

The summary of the proposed Order which was prepared by OMB indicated that this project was designed to strengthen existing investigative procedures in the Government and to establish guidelines therefore that would be acceptable throughout the Executive Branch; in fact, it does neither.

Initially, upon receipt of the draft Order from OMB, it was determined that we should attempt to revise the draft Order in its particulars in order to accomplish two things -- to make it reflect the minimum needs for the Intelligence Community for determining the suitability of individuals seeking access to intelligence information, and to make these standards applicable across-the-board so that non-Intelligence Community personnel might be deemed "suitable" without having to conduct an investigation anew. Upon completion of the project thus defined, we re-assessed the material and decided that the draft Order was so poorly drafted and created so many different and distinct problems for us, it would be better at this point to simply pull the Intelligence Community out from under it. The two amendments we propose to submit to OMB would accomplish this.

Tactically, it is hoped that our actions, coupled with serious objections to the draft Order by other Executive components, will result in forcing the whole issue back to the drawing board at which point, the Agency and the IC staff would have an input. Concurrently, however, we should recommend that Mr. Bush contact Brent Scowcroft directly to make him aware of the seriousness with which we view this matter and to enlist his support in our behalf (as far as we have been able to determine the NSC, like ourselves, has not really been a participant in this whole matter).

The first deadline we were given by OMB was 15 September. The General Counsel's office at OMB grudgingly extended this deadline a few days at my request. Subsequently, after deciding to redirect

our efforts to seek a general exemption, Tony Lapham talked with the OMB General Counsel and I believe told him we would have our official comment on the Draft Order to OMB by the end of the month (i. e. September). As far as I know that's where the matter stands.

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Office of Legislative Counsel